IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.4667 OF 2005

Shri Mahavir Babu Madnaik, resident of)
Galli No.6, Madnaik Mala, Jaysinghpur,)
Taluka - Shirol, District - Kolhapur.) ... Petitioner

Versus

Shrimati Aabuai Babu Madnaik, resident of)
Galli No.7, Jaysingpur, Taluka - Shirol,)
District –- Kolhapur.) ... Respondent

Mr. N. J. Patil for the petitioner.

Mr. R.G. Ketkar for the respondent.

CORAM : SMT. RANJANA DESAI, J.

DATED : 31ST MARCH, 2006.

P.C.:-

1. The petitioner is the plaintiff in R.C.S. No.70 of 2004 pending on the file of Second Joint Civil Judge, Junior Division, Jaysingpur. The respondent is defendant 2 in the said suit. Defendant 1 was one Shantinath Madnaik, whose name came to be deleted on 1/2/2005 by the trial court. In this writ petition, the petitioner has challenged order dated 10/6/2005 passed by the Second Joint Civil Judge, Junior Division, Jaysingpur, rejecting his application (Ex-69) praying that decree be passed in terms of compromise pursis filed by the parties.

2. It is the case of the petitioner that the suit properties originally belonged to Smt. Ratnabai Girgonda Patil. By her Will dated 2/9/1993, she bequeathed her properties to the petitioner. She expired on 10/9/1998. Under the said Will, the petitioner has got right, title and interest over the suit properties. According to the petitioner, he is in possession, occupation and cultivation of the suit properties. His case is that defendant 1 Shantinath, in collusion with revenue officers, by making false representation got the name of the respondent entered in the revenue records against the suit properties without giving notice to the petitioner knowing full well that the petitioner has become the owner of the suit properties by virtue of Will dated 2/9/1993. According to the petitioner, the respondent is trying to disturb the petitioner's peaceful possession of the suit properties. It is on the basis of these facts that the petitioner filed the instant suit praying for a declaration that entry in the 7/12 extract as per diary No.6868 is not binding on him; that the defendants be restrained from creating any encumbrances on the suit properties and that the defendants should be prevented from disturbing his peaceful possession of the suit properties.

3. According to the petitioner, the parties decided to settle the matter amicably. Consent pursis (Ex-65) was filed in the court and the parties requested the court to pass a decree as per the consent pursis. On 6/2/2005, the court passed an order directing both the parties to remain present in the Lok Adalat. The matter was kept for compromise in the Lok Adalat. However,

before the Lok Adalat, the respondent filed a pursis (Ex-66) and denied the terms of compromise by making certain allegations. Thereafter, the petitioner filed the instant application (Ex-69) and prayed for passing a decree as per the consent pursis (Ex-65). The respondent resisted the application. The trial court rejected the application and, hence, this writ petition.

4. Mr. Patil, the learned counsel appearing for the petitioner contended that as per the provisions of Order XXIII, Rule 3 and Order III, Rule 1 of the Code of Civil Procedure, (for short, "the C.P.C.") the learned judge was under an obligation to pass a decree in terms of the compromise. He submitted that though the respondent has made some allegations against her power of attorney holder, the learned judge has not accepted the said allegations and, therefore, the learned judge should have recorded the compromise. Mr. Patil contended that signatures on the consent terms have not been denied by the parties and, therefore, consent terms which were signed by the advocates and constituted attorney of the respondent were binding on them and the parties cannot be allowed to frustrate the compromise. Mr. Patil contended that if at all, the court felt that the parties have not compromised the dispute, then the court should have decided that question by ordering an inquiry. In this case, without making any inquiry in the matter, the court has wrongly rejected the application and, hence, the order passed by the trial court needs to be set aside. Mr. Patil submitted that this court may direct that necessary inquiry be conducted by the trial court as to whether a compromise was in fact arrived at or not. In this connection, the learned counsel relied on the

judgment of the Supreme Court in *Byram Pestonji Gariwala v. Union Bank of India & Ors., AIR 1991 SC 2234*, the judgment of this court in *Smt. Kamalabai Chinnaswami and others v. M/s. D. Vira & Company and another, 1996 (1) B.C.J., 259* and the judgment of the Himachal Pradesh High Court in *Bhuvnesh Verma v. Kashmiri Lal, 2001 (3) CCC 409 (HP)*.

5. As against this, Mr. Ketkar, the learned counsel appearing for the respondent contended that the court cannot compel a party to agree to a compromise decree. If a party expresses his/her unwillingness or if the circumstances indicate that the compromise is not fair or is likely to defraud a party, it is the duty of the court not to pass a decree in terms of the compromise. He drew my attention to the reply filed by the respondent to the petitioner's application where the respondent has stated that her power of attorney holder has not filed the agreed terms of compromise; that he has filed different terms of compromise and, therefore, she has cancelled the power of attorney and she does not want to consent to the passing of the compromise decree. Mr. Ketkar submitted that as per the agreed terms, the respondent was to get either one acre of land or Rs.4 lacs but under the compromise decree which was sought from the court, the respondent is neither to get land nor the money. It is in these circumstances that she has refused to agree to the compromise decree and the court has, therefore, rightly refused to pass a compromise decree. The learned counsel drew my attention to explanation to Order XXIII Rule 3 which states that an agreement

or compromise which is void or voidable under the Indian Contract Act, 1872 shall not be deemed to be lawful within the meaning of the said rule. Mr. Ketkar contended that the present case is clearly covered by this explanation. He submitted that the judgments cited by Mr. Patil have no application to the facts of the present case because here the compromise, on the face of it, is vitiated by fraud. It was, therefore, not necessary for the court to even order an inquiry and the trial court was right in rejecting the application.

6. There can be no dispute about the proposition that a recognised or a duly authorised agent or representative of a party can enter into an agreement or compromise on behalf of the principal. Rules 1 and 2 of Order III provide that recognised agents like power of attorney holder can act on behalf of the principal. In *Byram Gariwala' s case (supra)* the Supreme Court has held that the words `in writing and signed by the parties' found in Rule 3 of Order XXIII would mean signed by a party's recognized agent or by a pleader as provided in Order III Rule 1 of the C.P.C. Therefore, the compromise pursis signed by the power of attorney holder of the respondent could have been accepted and decree in terms thereof could have been passed if the other conditions present in Order XXIII Rule 3 were present.

7. Order XXIII Rule 3 provides for compromise of a suit. Under this rule, if it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, the court shall order such agreement, compromise or satisfaction to

be recorded and shall pass a decree in accordance therewith.

8. The proviso to this rule states that where it is alleged by any party and denied by the other that an adjustment or satisfaction has been arrived at the court shall decide the question, but no adjournment shall be granted for the purpose of deciding the question unless the court for reasons to be recorded thinks fit to grant such adjournment. Explanation to this rule states that an agreement or compromise which is void or voidable under the Indian Contract Act, 1872 shall not be deemed to be lawful within this rule.

9. It is clear, therefore, that when any document evidencing compromise signed by the parties or by their recognised agents or pleaders is filed in the court, the court if it is satisfied that the compromise is lawful and the suit is adjusted in terms thereof shall order such compromise to be recorded and shall pass a decree in accordance therewith. Therefore, the moment the court is satisfied that there is a lawful and genuine compromise it has to record it and it has to pass a decree in terms thereof. The court has no alternative but to pass a decree in such a situation. That is the mandate of law. But if any party alleges that there is a compromise and other party denies the said fact, the court has to stay its hands. It has to decide this question. The court has, therefore, a discretion not to record the compromise if it comes to the conclusion that the compromise is not lawful. The explanation to this section gives clue as to what enquiry the court has to make while deciding this question. It says that an agreement which is void or

voidable under the Indian Contract Act shall not be deemed to be lawful. Obviously, therefore, the court has to find out, inter alia, whether the compromise is vitiated by coercion, fraud, or misrepresentation. For this, the court may conduct an inquiry. But in my opinion if in a given case the fraud, misrepresentation or coercion is evident on the face of record, it is not necessary for the court to conduct an inquiry or direct an inquiry to be conducted. It is not unusual for the court to detect such a case because it is equipped with a judicially trained and experienced mind.

10. In this connection, I may usefully refer to the observations of the learned single judge of this court in his order dated 2/7/2004 passed in Civil Application No.4565 of 2002 in First Appeal No.353 of 1992. Referring to Order XXIII Rule 3 of the C.P.C., the learned single judge has observed that though this rule contemplates that if a party to the litigation alleges that there is a settlement, and if the said fact is denied by the other side, an inquiry is required to be held for ascertaining whether the settlement has taken place. In a given case, even parties can be permitted to lead evidence on the controversy but it is not necessary in every such case to permit the parties to lead evidence. It is observed that if it is found that the case in the application is false, it is not necessary to permit the parties to lead oral evidence.

11. In this case, there is no dispute about the fact that the parties had decided to compromise the dispute. Compromise pursis (Ex-65) signed by the advocates for the parties, by the plaintiff and the power of attorney holder

of the respondent was filed in the court on 1/2/2005. On that day by consent of the parties, the name of original defendant 1 came to be deleted. The court directed the parties to remain present before the Lok Adalat on 6/2/2005. The suit was kept for compromise before the Lok Adalat. On 6/2/2005, the respondent appeared before the Lok Adalat and presented her reply (Ex-66) in which she objected to the compromise decree being passed.

12. I have carefully gone through Ex-65 and Ex-66 to ascertain why the respondent does not want a decree in terms of the compromise.

13. In compromise pursis (Ex-65) it is stated that the respondent has no objection if her name is deleted from the 7/12 extract. It is further mentioned that the respondent is agreeable to the name of the petitioner being entered in the 7/12 extract and, her name being deleted from it. It is further stated that the respondent will have no concern with the petitioner's ownership and possession of the suit property. But, in this entire compromise pursis, the consideration which the respondent is to get for agreeing to deletion of her name from the 7/12 extract is not mentioned.

14. I must note that copy of reply (Ex-66) is not annexed to the petition. I had to take it from Mr. Ketkar, the learned counsel for the respondent. It was highly improper for the petitioner to keep back this document from the court. In her reply (Ex-66), the respondent has stated that the plaintiff is her son. Advocate Mr. Belanki and the petitioner's advocate Mr. Kagawade are

intimate friends. Advocate Mr. Belanki is the resident of the respondent's village Nimshirgaon and, therefore, she knows him from childhood. It is because of this that Advocate Mr. Belanki put a proposal for compromise before her. According to the respondent, Advocate Mr. Belanki told her that he regards her as his mother and, hence, he will bring about a compromise between the parties. He told her that out of the two acres of land involved in the suit one acre land will be given to the plaintiff and one acre land will be given to her or instead of one acre land, Rs.4 lacs will be kept in the bank in her name and receipt thereof will be given to her. It is further stated that because of this, on 31/1/2005, the respondent cancelled the power of attorney which she had issued in favour of Mr. Katkar, who was known to her and executed a special power of attorney in favour of Advocate Mr. Belanki. The respondent has further stated that she has reliably learnt that Advocate Mr. Belanki did not file the agreed terms of compromise but, filed different terms of compromise and, therefore, she has cancelled the special power of attorney executed in favour of Advocate Mr. Belanki and, she is presenting the pursis in the court stating that she does not want to compromise the suit. On this pursis, she has put her thumb impression.

15. After reading both these documents, I am convinced that the respondent who is an illiterate rustic old lady was being made to be a party to a compromise decree which is totally against her interest. In the title of the suit, the age of the respondent is stated to be 80. That she is illiterate is evident from the fact that on written statement as well as on reply (Ex-66) she

has put her thumb impression. What she has stated in her reply has a ring of truth. The compromise pursis is totally one sided. It is wholly in favour of the plaintiff. The respondent gets nothing under it. On the face of it, it is an unequal and unjust arrangement and the respondent has rightly objected to it. It is by sheer providence that the respondent has come to know that the compromise pursis which was being filed in the court does not contain the terms which she was told it would contain. The compromise on the face of it is vitiated by misrepresentation and, hence, it is not necessary to order any inquiry. No decree can be passed in terms thereof.

16. The trial court rejected the application holding that the compromise was not recorded and that there is no provision in law under which a party can be compelled to enter into a compromise. The trial court has surprisingly observed that the respondent had not brought the agreed terms before the court and had not pointed out mischief of her power of attorney holder and, hence, allegations against her power of attorney holder are not proved.

17. In my opinion though application is rightly rejected, the approach of the trial court is not proper. The respondent has not stated in her reply that any consent terms were reduced in writing. She has said that Advocate Mr. Belanki told her that she would either get one acre land or Rs.4 lacs however consent terms as agreed upon were not filed by him. Therefore, there was no question of her producing any draft consent terms. The trial court should not have lost sight of the fact that the respondent is an 80 year old rustic lady. In

this case, I was inclined to take a very strict view. It is only because of the request made by Mr. Patil, the advocate for the petitioner that I have refrained from commenting upon the conduct of the parties, which I was inclined to do despite the kind view of the matter taken by the trial court.

18. I close, I must refer to two judgments on which Mr. Patil has placed reliance. In *Smt. Kamalabai Chinnaswami's case (supra)*, the consent terms were filed by the husband and the wife for divorce and permanent alimony. The wife was willing to perform her part of the consent terms but the husband was trying to back out from the consent terms. In the facts before this court, it was held that the husband came with a dishonest intention and he cannot be allowed to back out from the consent terms. Undoubtedly, if a party is trying to back out from the consent terms because of dishonest intention, the court should not allow the compromise to be frustrated. Such are not the facts here. This judgment would, therefore, not be applicable to the present case.

19. Mr. Patil relied on the judgment of the Himachal Pradesh High Court in *Bhuvesh Verma's case (supra)*, because according to him facts of that case are similar to the facts of this case. In that case, a compromise deed signed by the parties was filed in the trial court. The trial court instead of passing a decree in terms of the compromise, directed that the suit be listed before the Lok Adalat. The defendant moved an application under Order XXIII, Rule 3 of

the C.P.C. for disposal of the suit as per the compromise already on record. The plaintiff filed a reply stating that there was no valid and effective compromise. The defendant's application was dismissed by the trial court on the ground that the original compromise was not recorded by the court and that the plaintiff was not ready to accept the terms of the compromise and he cannot be compelled to effect the compromise.

20. The Himachal Pradesh High Court found these reasons not satisfactory. It held that the trial court acted contrary to the express provisions of law by not proceeding with the matter there and then and instead referred the matter to the Lok Adalat. It was held that once the parties enter into a written compromise, the court cannot refuse to act on such compromise on the ground that the court has not yet recorded it. It was also observed that the trial court had failed to arrive at an objective satisfaction after deciding the question as required under proviso to Rule 3 of Order XXIII. Under the proviso, the court has to find out whether there was any compromise. The trial court was, therefore, directed to consider and decide the application as per Rule 3 of Order XXIII of the C.P.C. It is significant to note that the High Court also observed that the words `where it is proved to the satisfaction of the court' in the rule are wide enough to impose a duty on the court to inquire whether a compromise was lawfully arrived at and if it is established that it was not, or that it was vitiated by fraud coercion, undue influence or any other factor, which will render the contract void, to proceed with the suit on merits.

21. This judgment in my opinion cannot be used against the respondent. I have already noted that the compromise pursis which was filed in the court was totally one sided and unjust. It was vitiated by misrepresentation. A decree in terms thereof would have worked great injustice on the respondent. Since the compromise pursis on the face of it is unjust, one sided, unequal and vitiated by misrepresentation, no inquiry needs to be conducted. The trial court has rightly rejected the application of the petitioner. No interference is necessary with the impugned order. Writ petition is rejected.

(SMT. RANJANA DESAI, J.)